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BY THE SENATE.

FEBRUARY 13TH, 1884.

Read and made the order of the day for Tuesday, February 19th, at 12.15 P. M., and fifteen hundred copies ordered to be printed.

By order,

J. M. MILLER, *Secretary.*

REPORT

OF THE

JOINT SELECT COMMITTEE

APPOINTED TO CONFER WITH

The Legislature of Virginia

IN REFERENCE TO THE

Fishing and Oystering Interests of the
Two States.

ANNAPOLIS:

JAMES YOUNG, STATE PRINTER.

1884.

REPORT.

To the Honorable, the General Assembly of Maryland :

The Joint Special Committee appointed by your Honorable Bodies to visit the city of Richmond and confer with the Legislature of Virginia in relation to the fishing and oyster-ing interests of the two states, respectfully report that they visited said city of Richmond, and on the evening of the fifth instant, at the invitation of the Virginia Assembly, met the Virginia committees in the hall of their House of Delegates, and were accorded a patient and respectful hearing; that, after a full expression of our views, on motion of Senator Gill, of our committee, sub-committees of three were appointed from each committee, to meet on the following morning and confer as to an agreement or understanding of the respective rights of the two states in the Pocomoke sound and river and the Potomac river. The said sub-committees consisted of Messrs. Stuart (Speaker), Evans and Fletcher, on the part of Virginia, and Senators Gill and Hodson and Representative Mitchell, on the part of Maryland. That on the following day the said sub-committees held two protracted sessions, and, failing to agree, separated, and the Maryland sub-committee presented to your committee the following report, which is herewith submitted as part of this report, and is as follows, to wit :

To the honorable, the committee appointed under the joint resolution of the General Assembly, to visit the Virginia Legislature to ascertain what concurrent legislation, if any, should be passed by the two states in relation to " Oysters " in Potomac river and Pocomoke sound.

GENTLEMEN: The undersigned, your sub-committee, in accordance with the instructions of the committee, beg leave to report that they met the sub-committee of the similar body of the Virginia Legislature in a room at the Exchange

hotel, and proceeded forthwith to discuss with them the respective rights of the States of Virginia and Maryland in and to the oyster fisheries of the Potomac river, and that part of Pocomoke river now known as and called Pocomoke sound. Under the compact between the states, which will be found in the acts of the State of Maryland, 1785, and which are as follows :

Section 7. The citizens of each state respectively shall have full property in the shores of the Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river ; but the right of fishing in the river shall be common to and equally enjoyed by the citizens of both states : provided that such common right be not exercised by the citizens of one state to the hindrance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seines on the shores of the other.

8. All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Patowmack, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke, within the limits of Virginia, by preventing the throwing out ballast or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states.

9. Light-houses, beacons, buoys, or other necessary signals, shall be erected, fixed and maintained upon Chesapeake bay, between the sea and the mouths of the rivers Patowmack and Pocomoke, and upon the river Patowmack, at the expense of both states ; if upon Patowmack river, at the joint and equal charge of both states ; and if upon the before-mentioned part of Chesapeake bay, Virginia shall defray five parts and Maryland three parts of such expense ; and if this proportion shall, in future times, be found unequal, the same shall be corrected. And for ascertaining the proper places, mode and plans for erecting and fixing light-houses, buoys,

beacons and other signals, as aforesaid, both states shall, upon the application of either to the other, appoint an equal number of commissioners, not less than three or more than five from each state, to meet at such times and places as the said commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode and plans for erecting such light-houses, beacons or other signals, and report the same, with an estimate of the expense, to the legislatures of both states for their approbation.

10. All piracies, crimes or offences committed on that part of Chesapeake bay which lies within the limits of Virginia on that part at the said bay where the line of division from the South point of said Patowmack river (now called Smith's point) to Watkins' point, near the mouth of Pocomoke river, within the limits of Virginia, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of Virginia, against the citizens of Maryland, shall be tried in the court of the State of Maryland which hath legal cognizance of such offences; and all piracies, crimes and offences committed on the before mentioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland, against any citizens of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offences. All piracies, crimes and offences committed on the said parts of Chesapeake bay and Pocomoke river by persons not citizens of either state, against persons not citizens of either state, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offences. And all piracies, crimes and offences committed in the said parts of Chesapeake bay and Pocomoke river by any citizen of the commonwealth of Virginia, or of the State of Maryland, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river Patowmack shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake bay and Pocomoke river, in every respect, except in the case of piracies,

crimes and offences committed by persons not citizens of either state upon persons not citizens of either state, in which case the offender shall be tried by the court of the state to which they shall first be brought; and if the inhabitants of either state shall commit any violence injury or trespass to, or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer any court of record, or civil magistrate of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person and proceed to trial and judgment in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offender shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the court or magistrate giving such judgment in the same manner as upon judgments given in other cases; or upon a transcript of such judgment properly authenticated being produced to any court or magistrate of the state where such offender may reside, having jurisdiction within the state or county where the offender may reside, in cases of a similar nature such court or magistrate shall order execution to issue upon such authenticated judgment, in the same manner, and to the same extent, as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited.

Your committee further report that they stated to the Virginia committee that they were ready to receive and make propositions which they could recommend to the General Assembly of Maryland as a settlement of all differences that had arisen in the past, as to the rights of the citizens of both states to take or catch oysters in the Potomac river and that part of the Pocomoke river known as Pocomoke sound. We then reverted to the act which was recommended to the Legislature of Maryland in 1882 by a similar committee to ours, but which did not meet the approval of our state, to ascer-

tain if it could in any way be utilized as a basis for a new agreement, which act, as approved by Virginia, will be found in the reports of the Oyster Commissioners of Maryland, on page 62 of said report.

Section one of that act was first considered, which section undertook to define the lines between the States of Virginia on the Potomac river and Maryland. This section, it was mutually agreed, to omit. We then passed to the consideration of section two, which brought up all questions in relation to the Potomac river which had been discussed by your committee with the Virginia committee on the evening before in the House of Delegates, and it was found that at least this much would be acceptable to the representatives of both states in said committee, that a joint act should be passed which would prohibit all dredging in the Potomac river during the time that it was prohibited by the State of Maryland in the Chesapeake bay; that all taking of oysters, either by tongs or in any other manner, should be prohibited from the fifteenth day of April to the first day of September. So much having been agreed upon as to the Potomac, the question was then mooted as to who will enforce this law, the award of Black and Jenkins having given the whole of the Potomac river to Maryland. The committee on the part of Virginia contended that Virginia possessed all the rights of fishing and oystering, and the incidentals of riparian ownership in that river, and that no law touching this subject could be passed by Maryland without the concurrence of Virginia; and that if a joint law was passed by the two states the rights to prevent violations of such law was a part of the prerogative of the State of Virginia, which could not be surrendered. This committee, on your part, contended that while for the purpose of settling this vexed question it might be proper for the State of Maryland to unite with the State of Virginia in the passage of a joint act for the protection of the oyster fisheries of the Potomac river, it did not by any means follow that the State of Maryland ought to surrender its jurisdiction over its own territory, or any part of it, without coming to any conclusion further than the expression of the above views.

This subject was passed to take up the consideration of the respective rights of the states aforesaid in that part of Pocomoke river now known as Pocomoke sound, and your committee believing that, under the compact of 1785, the citizens of the State of Maryland were entitled to the same rights in that part of Pocomoke river known as Pocomoke sound as the citizens of Virginia were entitled to in the Potomac river, proposed that the joint law should include a total prohibition of dredging in said part of Pocomoke river now known as Pocomoke sound, and that the rights to tong oysters in said waters should be secured equally to the citizens of both states in said part of aforesaid river for the same length of time as in the Potomac. Your committee also proposed, on the part of Maryland, that Maryland should police the Potomac river, protect the oysters therein, and arrest all offenders against the provisions of the joint law, and that Virginia pay one-half of the actual cost of such protection in our water by charging a license fee to such dredging vessels and tonging canoes belonging to Virginians as should ply their trade in that river, and that in the Pocomoke sound each state should police its own waters under the joint law, charging the citizens of the other state the same license fee as its own citizens.

The Virginia committee suggested that their own constitution prohibited the imposition of any license fee for taking oysters, whereupon the Maryland committee suggested that any method whereby one state or its citizens should pay one-half the expense of policing the waters, under joint control, would be equally agreeable to them, and that it might be paid in a lump sum or otherwise.

At this time a recess was taken until four o'clock P. M.

Upon the reassembling of the committees we were met by the following proposition from the Virginia committee:

Resolved, That it is not expedient for the committee of the General Assembly of Virginia to recommend any joint legislation touching the Pocomoke sound, the State of Virginia claiming absolute and exclusive jurisdiction of said

sound, except north and west of said boundary line as established by Black and Jenkins.

2. That in the Potomac river concurrent legislation is necessary, in the interest of both states, to prohibit for a reasonable time, entirely or for a certain space in each year, dredging therein, and, for a briefer space, tonging; such legislation to be a recognition by the one state of the equal rights of the other in said waters as far as said oystering, fishing and riparian rights are concerned.

The committee offered this proposition, and, at the same time, stated that the jurisdiction of Virginia over what is known as Pocomoke sound south and east of the line fixed by Black and Jenkins was absolute and exclusive, and the State of Virginia could not and would not surrender its sovereign rights over that valuable portion of its territory, and that any joint legislation would be a virtual recognition of the claims of Maryland in Pocomoke sound, which claims they denied in toto.

For the purpose of overcoming the difficulties presented by this objection, and of arriving at a satisfactory and unobjectionable conclusion, your committee submitted verbally the three following propositions:

1. The first was the proposition as has already been fully set out in this report as having been made by us to the Virginia committee, with the following addition: that each state reserve to itself, in such language as the representatives of the different states might see fit, all and every right which they supposed their respective states might be entitled to, either under the compact of 1785 or the award of Messrs. Black and Jenkins of 1877, and that their concurrent act shall continue in force for only two or four years, and expire by its own limitation.

2. The second proposition was similar to the above, except that instead of including the whole of what is known as Pocomoke sound, it should include only so much thereof as is now, and has during the memory of man, been used and

enjoyed by the citizens of Somerset county, Maryland, in common with the citizens of Accomac county, Virginia, for taking oysters with tongs, said right to be restricted to the citizens of the aforesaid two counties.

Both of the above propositions were rejected by the committee on the part of Virginia.

The committee on the part of Virginia then stated it as their opinion that Maryland was entitled to the same rights in Pocomoke river that Virginia was entitled to in the Potomac river, but stated that Pocomoke river did not include any part of what is now known as Pocomoke sound, which latter was not provided for or included in the compact of 1785.

Your committee then proposed that an act, similar to the above proposition, or any of them relating to the Potomac and Pocomoke rivers, be passed at once, and that said joint act should contain an addition thereto, providing for the appointment of one arbitrator by the State of Virginia and one by the State of Maryland, the two to select a third, to whom shall be referred the question as to what constituted the Pocomoke river as used in the compact, and whether or not said compact included the waters now known as Pocomoke sound, with power to define said river as used in said compact; the said act to be operative only so far as said commissioners shall decide the said river to have extended in the meaning of the said compact.

The Virginia Committee then stated that their preceding proposition embodied their ultimatum, and they could not depart from it.

Your committee thereupon declined to entertain any proposition for the settlement of the questions at issue which did not include that part of Pocomoke river, now known as Pocomoke sound, as well as Potomac river.

Your committee further state that in declining to entertain any proposition which excluded the consideration of the vexed questions as to the rights of the respective States in and to

oyster fisheries of Pocomoke sound, they were actuated by the following considerations :

1. That no agreement which excluded the rights of the citizens of Maryland in the waters of the Pocomoke sound could be anything but a partial settlement of the difficulties between the two States, and that a settlement of these questions, which has caused the least trouble, while leaving open those which have caused the arrest, fining and imprisonment of large numbers of our citizens, and the confiscation of their property by the courts of Virginia, and the shedding of the blood of a citizen of Maryland by the officers of Virginia while engaged in tonging oysters in Pocomoke sound, might tend to a repetition of the same conflicts in the future.

2. That whilst it would be a concession on the part of Maryland, of the rights claimed by the State of Virginia in the oyster fisheries of the Potomac river, it would be a virtual relinquishment by the State of Maryland of similar rights claimed and exercised by a large number of its citizens in the waters of Pocomoke sound.

3. That the validity of the alleged compact of 1785 is so problematical, and the rights claimed by Virginia under it so doubtful, that we did not feel justified in conceding them in the Potomac river, unless we were at the same time to receive a concession of the rights claimed by us in the Pocomoke sound.

JOHN GILL, JR.,
THOS. S. HODSON,
W. DEC. MITCHELL.

Your committee further report that, finding the interests of the State of Maryland in the subject-matter of great value to our state, and finding the legal rights clouded with some uncertainty, they concluded to ask advice from the Attorney-General of our state, and, awaiting his opinion, will make no recommendation of action on the part of this assembly, but

will ask to be continued, with permission hereafter to make a supplemental report.

All of which is respectfully submitted,

JOHN GILL, JR.,
THOS. S. HODSON,
JOS. S. ALLSTON,

Committee on the part of the Senate.

JOSEPH B. SETH,
EDWARD D. FITZGERALD,
W. DEC. MITCHELL,
WM. HENRY LEGG,

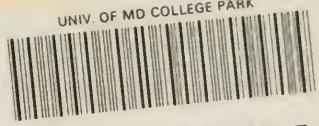
Committee on the part of the House of Delegates.

The chairman of the Joint Special Committee further desires to submit that, under the order of this house, the chairman of the Committee on Claims paid to him the sum of three hundred dollars (\$300) to defray the expenses of said committee; that he expended in hotel bills, railroad and buss fares, telegraph and express charges, the sum of two hundred and twelve dollars and seventy-five cents (\$212.75); and has on hand the sum of eighty-seven dollars and twenty-five cents (\$87.25), and respectfully asks to be authorized to return the same to the Committee on Claims.

Respectfully reported,

JOSEPH B. SETH, *Chairman.*

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N. MANCHESTER,
INDIANA

